REMARKS

The Office Action mailed September 8, 2008, has been received and reviewed. Each of claims 1-44 stands rejected. Specifically, claims 1-43 have been rejected under 35 U.S.C. § 102(e) as being anticipated by McGee et al., (International Publication No. WO 03/009140, hereinafter "the McGee reference"), and claim 44 has been rejected under 35 U.S.C. § 103(a) as not being nonobvious in view of the McGee reference and Spoerre et al., (US Patent No. 5,602,761, hereinafter "the Spoerre reference"). Claims 1, 3, 5, 10, 12, 14, 19-20, 23, 28-31, 34, 36, 38, and 42 have been amended herein. Care has been exercised to introduce no new subject matter. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

Rejections based on 35 U.S.C. § 102

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdeggal Brothers v. Union Oil co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 2 USPQ 2d 1913, 1920 (Fed. Cir. 1989). *See also*, MPEP § 2131.

Claims 1-43 are rejected under 35 U.S.C. § 102(e) as being anticipated by the McGee reference. Claims 1-44 have been amended. As the McGee reference does not describe, either expressly or inherently, each and every element of the claims as currently amended, Applicants respectfully traverse these rejections.

Independent claim 1, as currently amended, recites a method for monitoring a process which comprises creating a signature representative of the process, continuously

updating the created signature *with a weighting scheme;* (Specification at [0060]) and detecting abnormalities based upon the continuously-updated signature, wherein the process is related to usage of networked computing devices in a datacenter, wherein the signature includes information related to time-sensitive averaging that accounts for variation in a business cycle, *and wherein the weighting scheme consists of a first weighting factor that represents a continuously-updated signature weight and a second weighting factor that represents a current data weight.* (Specification at [0060].)

In contrast, although the McGee reference discloses a weighting scheme, the McGee reference weighting scheme is a decaying weighted sum of values for a particular time slot for each of the weeks for which data is available. Thus, the value of the previous hour, current hour of previous day, current hour of same day of previous week, etc are weighted and considered. The McGee reference's weighting scheme therefore uses multiple weighting factors (w_h, w_d, w_j, etc) to represent the data used to update the current threshold value (represented in McGee as v_c). *See* McGee reference at [0048] and [0049]. Applicants disclose one weighting factor for the continuously-updated signature and only one weighting factor for current data (as evidenced through the claim language "consists of"), thus accomplishing continuous updating without the storage of large amounts of raw data that would be required under the McGee reference weighting scheme. *See* Specification at [0030]. The McGee reference does not disclose such a weighting system.

It should be brought to the examiner's attention that because the weighting system of the McGee reference utilizes a large number of historical data values to update a parameter threshold, at some point as the process progresses, only one historical data point is available. Specifically, after one hour, a value can be determined for v_h (value from previous hour), but the next value in the decaying weighted sum is not determined until the next day. *See* McGee

reference at [0071]. Thus, for a short period as the process begins, the McGee reference only considers one current data value in updating a parameter threshold. However, the temporary use of only one current data value and weight is merely a condition present while the implementation of the method utilizing multiple data values and weights is beginning and is not disclosed as a method for updating parameter thresholds. What Applicants disclose is a system, with one weighting factor representing the weight of current data, that continuously updates a parameter signature while obviating the need for the extensive data storage the McGee reference requires. *See* Specification at [0030].

Accordingly, it is respectfully submitted that the McGee reference fails to describe, either expressly or inherently, each and every element of currently-amended claim 1. Moreover, the McGee reference fails to show the identical invention in as complete detail as contained in the claim. As such, because claim 1 is not anticipated by the McGee reference, withdrawal of the 35 U.S.C. § 102(e) rejection of currently-amended independent claim 1 is respectfully requested.

Independent claims 10, 28, 34, and 42 and dependent claim 20 include amended limitations similar to those in independent claim 1. Thus, independent claims 10, 28, 34, and 42 and dependent claim 20 are allowable for at least the reasons stated with regard to claim 1 and are not anticipated by the McGee reference. Therefore, withdrawal of the 35 U.S.C. § 102(e) rejection of these claims is respectfully requested.

Independent claim 19, as currently amended, recites a method for creating a signature useful for detecting abnormalities in a computing system environment which comprises setting a learning responsiveness ratio; monitoring a system parameter; adjusting the learning responsiveness ratio at fixed intervals until a desired value is reached; calculating an average and standard deviation for each interval; and using the average, standard deviation and learning

responsiveness ratio to create the signature, *wherein the learning responsiveness ratio is equated to a weighting factor that represents current data divided by a weighting factor that represents the signature,* (Specification at [0060]) wherein the abnormalities in the computing system environment relate to usage of networked computing devices in a datacenter, and wherein the signature includes information related to time-sensitive averaging that accounts for variation in a business cycle.

The learning responsiveness ratio is derived from the weighting scheme discussed above with regard to claim 1. *See* Specification at [0060]. As also discussed above, the McGee reference discloses a different weighting scheme and makes no mention of a learning responsiveness ratio, by name or in substance. Accordingly, it is respectfully submitted that the McGee reference fails to describe, either expressly or inherently, each and every element of currently-amended independent claim 19. As such, withdrawal of the 35 U.S.C. § 102(e) rejection of currently-amended independent claim 19 is respectfully requested.

Dependent claims 2-9, 11-18, 20-27, 29-33, 35-41, and 43 depend either directly or indirectly on currently-amended independent claims 1, 10, 19, 28, 34, and 42, respectively, which are submitted to be allowable for at least the reasons discussed above, and as such, are not anticipated by the McGee reference. Therefore, withdrawal of the 35 U.S.C. § 102(e) rejection of claims 2-9, 11-18, 20-27, 29-33, 35-41, and 43 is respectfully requested.

Additionally, currently-amended dependent claim 3 has been amended for clarity and includes amended limitations similar to amended independent claim 19. *See* Specification at [0054].

Currently-amended dependent claim 5 has also been amended for clarity, reciting the method of claim 1 wherein updating the created signature comprises *ensuring that recently recorded data has a greater impact than older data by setting the second weighting factor to a*

value greater than the first weighting factor. *See* Specification at [0058]. Currently-amended dependent claim 14, 23, and 38 were similarly clarified.

Rejections based on 35 U.S.C. § 103

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, suggestion, or motivation found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. See, *Application of Bergel,* 292 F. 2d 955, 956-957 (1961). Thus, in order "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success [in combining the references]. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." *See* MPEP § 2143. Recently, the Supreme Court elaborated, at pages 13-14 of *KSR*, it will be necessary for [the Office] to look at interrelated

teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application]." *KSR v. Teleflex*, 127 S. Ct. 1727 (2007).

Claim 44 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the McGee and Spoerre references. Claim 44 depends on currently-amended independent claim 42. As discussed above, currently-amended independent claim 42 is submitted to be allowable and not anticipated by the McGee reference.

The Spoerre reference discloses a reasoning process in identifying faults and their possibilities. *See* Spoerre at column 6, lines 57-65.

Neither the McGee reference nor the Spoerre reference disclose the creation of a signature representative of a process through a weighting scheme as discussed above with regard to claim 1. As such, the references, when combined, do not disclose all of the elements of claim 44. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection of claim 44 is respectfully requested.

CONCLUSION

For at least the reasons stated above, claims 1-44 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned at 816-474-6550 to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

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